

GAO

Report to the Secretary of Defense, the
Attorney General, and the Secretary of
the Treasury

August 1999

DEPARTMENT OF DEFENSE

Military Assistance Provided at Branch Davidian Incident



DISTRIBUTION STATEMENT A
Approved for Public Release
Distribution Unlimited



GAO

Accountability * Integrity * Reliability



United States General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-276428

August 26, 1999

The Honorable William S. Cohen
The Secretary of Defense

The Honorable Janet F. Reno
The Attorney General

The Honorable Lawrence H. Summers
The Secretary of the Treasury

In 1993, the Bureau of Alcohol, Tobacco, and Firearms (ATF) received assistance from the U.S. military, including counterdrug program support, while investigating violations of federal firearms laws by members of an obscure sect, the Branch Davidians, and their leader, Vernon Howell (also known as David Koresh), in Waco, Texas. On February 28, 1993, as the ATF tried to serve warrants on the sect's compound, a gunfight erupted, killing and wounding agents and Davidians. A standoff ensued that soon involved the Federal Bureau of Investigation (FBI). The military provided support to the two federal law enforcement agencies (LEA) throughout the 51-day standoff, which ended April 19, 1993, when the compound was destroyed by fire.

In August 1996, the House Committees on Government Reform and Oversight and on the Judiciary issued a report, "Investigation into the Activities of Federal Law Enforcement Agencies Toward the Branch Davidians" (Report 104-749).¹ The report recommended that we review certain aspects of the military assistance provided to the LEAs in this incident. We have reviewed the nature and extent of the assistance, including that from counterdrug programs, provided to these operations, as well as the counterdrug aspects of ATF's plans to serve a search warrant at the Davidian compound. We pursued three specific objectives:

- Determine whether the ATF's requests for support from military counterdrug programs met requirements for authorizing that support.

¹ This report was based on a joint investigation by the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight, and the Subcommittee on Crime of the Committee of the Judiciary.

19990830057

- Identify the measures ATF took to deal with any drug activity it might find during its warrant service, and determine whether those measures were appropriate for such operations where a methamphetamine laboratory might be encountered.
- Account for the types, costs, and reimbursements of all military support, including that from counterdrug programs, provided to the ATF and the FBI.

Results in Brief

ATF's two requests for military counterdrug support of its Davidian operations met requirements to authorize provision of that support under the relevant statutes.² The ATF cited possible drug-related activity at the compound in both its written requests—the first to the Texas National Guard and the second to Operation Alliance, a coordinating center for counterdrug assistance. The military's decision in both cases to provide the counterdrug support was a reasonable exercise of agency discretion and was authorized under the relevant statutes.

ATF's planning for the warrant service addressed the possibility of encountering hazardous drug materials. ATF agents were made aware of the suspected drug laboratory and the appropriate precautions. Moreover, a team from the Drug Enforcement Administration (DEA) was at the command post the day of the operation to handle any drug-related materials that might be found. This planning was consistent with ATF's own policies—and those of other federal LEAs—governing operations to secure armed suspects and facilities, including those where a drug laboratory is present.

Military assistance (both counterdrug and other) to the ATF and the FBI included surveillance, reconnaissance, and transport; equipment and supplies; training and instruction; and maintenance and repairs. The military provided several items of major equipment, including helicopters and unarmed tactical ground vehicles. We estimated the total cost of military assistance to be about \$1 million, of which nearly 90 percent was incurred by the Texas National Guard and active Army units and the rest by the Alabama National Guard and active Air Force. Under the Economy Act,

² The military is authorized to provide support to LEAs under a number of statutes. Generally, these agencies must reimburse the military for the cost of its assistance. However, the active military can support counterdrug activities on a nonreimbursable basis under section 1004 of the National Defense Authorization Act of 1991, as amended (P.L. 101-510), and the National Guard can do so under 32 U.S.C. §112.

the ATF and the FBI reimbursed the Texas National Guard, the Army, and the Air Force for about three-quarters of the support. Repayment of another 14 percent, which came from counterdrug programs, was waived by the military, which has the authority to do so if the supported agency suspects a drug connection. These nonreimbursable expenses represented less than \$140,000. The military also mistakenly undercharged these two agencies by a comparatively small amount (about 10 percent of the total), which should have been reimbursed. The Army does not plan to collect these undercharges, as it would realize no current benefit—it would have to apply any collection to prior-year obligations. Finally, under applicable statutes,³ the military gave the ATF and the FBI without charge some excess military items, mostly office and camp equipment, clothes, and tools.

Scope and Methodology

The events we examined occurred several years before we performed our work. Moreover, the ATF's investigation of Vernon Howell during 1992–93 focused on firearm violations, not on illegal drugs; neither the ATF nor any other agency, federal or state, performed a comprehensive, in-depth drug investigation of Howell or any other Davidian residing at the compound at the time.

For our first two objectives, we interviewed many current and former employees of the military and of those federal, state, and local LEAs that had dealings with the case. We also reviewed pertinent case files and material provided to the Waco Administrative Review.⁴ We did not try to substantiate actual drug activity by Howell or other compound residents. To obtain information concerning the authority under which their components assisted the LEAs, we contacted the Department of Defense (DOD), the National Guard Bureau, Joint Task Force Six, and the Texas National Guard.

For our third objective, we sought to determine the types and costs of military assistance provided to the ATF and the FBI. To this end, we reviewed available records maintained by DOD, the Army, and the Texas National Guard (requests and authorizations for assistance, hand receipts,

³ P.L. 101–189 § 1208 and P.L. 102–484 § 1044.

⁴ A group convened by the Department of the Treasury to review all aspects of ATF's investigation of Howell and the Davidians, including the ATF's effort to serve the arrest and search warrants on Feb. 28, 1993.

flight logs, DOD reports, etc.). We also interviewed officials at Operation Alliance, Joint Task Force Six, the Texas National Guard counterdrug program, and the Army. In addition, we reviewed the military's documentation concerning cost and reimbursement by the LEAs, including the accounting and recovery records. This information we compared with our data on the support rendered by the military.

For all objectives, we visited or contacted various military and law enforcement organizations, reviewed hundreds of pertinent documents, and viewed other relevant media. Appendix I describes our contacts and sources in greater detail.

We conducted our work between January 1997 and February 1999 in accordance with generally accepted government auditing standards.

Background

Throughout the ATF's investigation and the standoff at the compound, the military provided the ATF and the FBI a wide variety of assistance. A detailed discussion of the statutes authorizing the support is provided in appendix II.

LEAs operating in Texas may obtain military assistance for investigations having a counterdrug component from the Texas National Guard counterdrug program. This program can provide a range of investigative support services, from aerial reconnaissance to logistics.⁵ In accordance with regulations,⁶ requests for support from National Guard counterdrug programs must cite in writing a suspected drug connection. LEAs can also seek military counterdrug assistance via Operation Alliance, a clearinghouse representing the counterdrug interests of many federal, state, and local LEAs.⁷ The Alliance only accepts requests that cite in writing a suspected drug connection.

⁵Program personnel will not normally become involved in arrests of suspects, chain-of-custody of evidence, searches, interdiction, or the physical security of law enforcement officers.

⁶National Guard Regulation 500-2.

⁷The Alliance comprises state and local representatives from several states and agents from the DEA, the Customs Service, the Border Patrol, Coast Guard, the FBI and the ATF, the Internal Revenue Service, U.S. Marshal's Service, the Secret Service, and U.S. Attorneys. Representatives from DOD and the National Guard serve on the group as advisors only.

Requests that the Alliance approves can be referred to military organizations, which review the requests to ensure, among other things, that a suspected drug connection is explicitly stated.⁸ Each military organization can decline to provide the support despite the referral. In addition to the National Guard program, the Alliance may refer the request to Joint Task Force Six. This task force, an active service organization, identifies military units that can provide the assistance and coordinates with the requester.⁹ It also has a rapid support unit to respond to any immediate need.

Finally, LEAs can receive items without charge from DOD's Regional Logistics Support Office; these items come from its excess inventory. The agencies can request this support directly, and their operations need not have a counterdrug component.

According to the ATF, the drug connection in this operation was a possible clandestine methamphetamine laboratory, perhaps active, that it suspected was somewhere on the extensive Davidian compound. Drug laboratories, active or not, are extremely volatile and toxic, and specialized training and equipment are necessary to safely deal with the chemical materials. The DEA, having lead responsibility for counterdrug activities, provides extensive, highly detailed procedures that its agents are supposed to follow when dealing with clandestine laboratories. These procedures, which cover planning, entry, assessment, processing, exit, and follow-up, include such requirements as

- planning with a lab-certified chemist the entry of the suspect premises,
- assigning safety officers for the entry,
- having self-contained breathing apparatus and lab-certified teams on hand,
- giving specific warnings to the entry team, and
- supplying the entry team with full heat- and chemical-resistant clothing.

However, other federal LEAs, including the ATF, which do not have drugs as their primary focus and which lack DEA's extensive training and equipment have less elaborate drug-lab policies. In ATF's case, its instructions in this matter are quite explicit—agents are to call upon DEA

⁸The statutes, however, do not require a full discussion of the possible connection.

⁹Joint Task Force Six neither plans nor coordinates civilian operations, and active Army units can perform only support roles, not law enforcement functions.

to handle any possible drug evidence they encounter during their investigations. ATF entry teams must be made aware of the drug laboratory and of standard precautions. There is, however, no requirement that ATF teams making a "dynamic entry"¹⁰ wear fully protective counterdrug suits with self-contained breathing apparatus. This is also true for DEA entry teams. According to officials from both agencies, such equipment would restrict an entry team's vision and mobility and place it at unacceptable risk, as suspects are often armed.

Military Counterdrug Support to ATF's Davidian Operation Was Authorized Under Statutes

The ATF made two requests for military counterdrug support to its Davidian operations. The first was made directly to the Texas National Guard counterdrug program, and the second was later made to Operation Alliance, which approved and forwarded the request to the Texas National Guard counterdrug program and Joint Task Force Six for their consideration. Some counterdrug support to the ATF during its attempt to serve the warrant extended through the ensuing standoff, constituting a continued response to the agency's second request.

For both of its requests, ATF cited a possible drug connection to its Howell investigation. Although ATF conducted a firearms investigation of Howell and other Davidians, it also acquired information on possible drug activity when it decided to seek support from military counterdrug elements. Not all of this information was shared with the military, but it formed the backdrop to and reinforced the data that was shared.

During our review and in the following narrative, we focused on what the ATF knew about a possible drug connection, when the ATF knew it, and what information the ATF provided to the military counterdrug programs. These points are central to determining whether the military was authorized to provide counterdrug assistance under the relevant statutes.

¹⁰A very rapid, vigorous, sudden, unexpected entry. It is intended to surprise suspects and prevent them from getting to their guns or from destroying evidence and is used to prevent harm to agents and civilians alike.

ATF's First Counterdrug Request: Assistance From the Texas National Guard Counterdrug Program

In 1992, the local sheriff's office discovered that, between March and June of that year, Howell and other Davidians at the Waco compound had received frequent shipments of weapons, explosive components, and related materials.¹¹ By June 1992 those shipments totaled more than \$40,000. Realizing that matters were now beyond its capabilities, the local sheriff's office contacted the ATF and on June 4, 1992, briefed it on (1) the situation at the compound, including armed guards at the site and (2) the group's violent history, including a 1987 gun battle between Howell and the Davidians' former leader. On June 9, 1992, the ATF formally opened an investigation of Howell and his associates.¹² The agency focused on the conversion and manufacture of weapons and explosives, gathering information on Davidian connections and gun related deliveries that continued to arrive at the compound.

In late June, the sheriff's office notified ATF of a recent delivery to the compound of "chemicals, instruments, and glassware." The sheriff's explosives technician did not regard these items as consistent with the manufacture of explosives; an ATF agent thought these items could be used to manufacture drugs, suggesting a current operation. Later, in November 1992, while pursuing its firearms investigation, the ATF acquired information about a possible drug connection when the sheriff's office told the agency about one of Howell's associates. A search of criminal databases showed that this individual had a long history of drug involvement and had been paroled to the Waco area in April 1992 after serving time for his latest drug conviction.

From the first months of the investigation, ATF had kept in touch with the DEA office in Waco, seeking information it might have about the suspects. The DEA agents offered their help on the case, including undercover work, and performed some minor investigative assistance. In the summer or fall of 1992, the ATF and DEA agents speculated on how the Davidians were financing their heavy gun purchases and substantial building projects while supporting 100 or so compound residents. Based on their enforcement

¹¹ Assault rifles and conversion kits, ammunition, inert grenades, sensors, night-vision devices, chemicals, combat vests, etc. According to the Treasury Department report, some of these items could be used to illegally manufacture and possess machine guns and destructive devices contrary to the National Firearms Act (26 U.S.C. § 5845).

¹² The sheriff's office gave ATF the names of more than 30 current residents of the compound, which ATF checked for criminal histories.

experience, it seemed possible to the agents that a resident might be dealing in illegal drugs.

Having decided that it needed military assistance, on December 4, 1992, ATF discussed with a liaison from DOD¹³ how the military might help. The liaison suggested that the military could provide aerial thermal (infrared) photography of the site. He also informed ATF that it would have to reimburse the military unless there was a drug connection to its investigation.

On December 11, 1992, ATF contacted officers of the Texas National Guard counterdrug program to learn what aid it could provide to the Howell investigation. The Texas National Guard discussed the types of assistance available, including surveillance overflights, but explained that, to receive help from this program, the investigation must have a drug connection. The Texas National Guard advised the ATF to determine whether it might have a drug connection and, if so, to send a formal written request citing that connection.

On December 14, 1992, ATF wrote the Texas National Guard counterdrug program, requesting it to support the investigation with aerial photography and surveillance but mentioning no drug connection. The Texas National Guard told ATF it must submit a revised request that contained a possible drug connection.¹⁴

The ATF decided to inquire of all its contacts in this case whether they had knowledge of any drug activity in connection with the suspects. The first to be asked was a former resident of the compound; on December 16, 1992, this individual responded in writing with the following statements.

- Howell had told him that drug trafficking was a desirable way to raise money.
- Howell had told him about finding a methamphetamine laboratory when he took over the compound.

¹³This position was filled by a military officer under the Office for Drug Enforcement Policy and Support; he was stationed at ATF's Special Operations Division, Washington, D.C.

¹⁴According to Texas National Guard counterdrug officers, it is not unusual for LEAs to make requests without stating a drug connection. In those cases the Texas National Guard returns the request with an explanation of the need for a written statement of possible drug activity.

- Howell had told him that he turned the laboratory over to the sheriff's office, but another former resident maintained to this individual that Howell had not surrendered any drug materials.
- Another former resident was rumored to have trafficked in drugs while living at the compound.

ATF discussed this information with the sheriff's office, which confirmed that a methamphetamine laboratory was thought to have existed at the compound at one time. The sheriff's office denied ever receiving drug evidence from Howell or any other Davidian.¹⁵ This raised the possibility that the illegal equipment might still be at the compound.

The sheriff's office also confirmed for ATF that the alleged drug trafficker named by the former resident had lived at the compound along with another suspicious person. ATF searched the state's criminal database and found that (1) the first individual had an extensive history of narcotics and firearms violations and was in prison and (2) the second had violated federal firearms laws and was in prison for possessing a firearm during a drug-trafficking crime. It may also be at this time that the ATF learned of a third former resident who had produced methamphetamine at the compound. ATF's computer checks also showed that several current compound residents had prior drug involvement, including possession of marijuana, cocaine, and "tablets of dangerous drugs."

This information suggested to ATF that there were reasonable grounds to suspect a drug connection to its investigation. Consequently, on December 17, 1992,¹⁶ ATF notified DEA to that effect, informing it of the suspected laboratory, and asked DEA to handle all drug evidence when the warrants would be served. ATF also informed the DOD liaison that a methamphetamine laboratory might be at the compound. The next day the ATF sent a revised request for aid to the Texas National Guard counterdrug program, this time citing a drug connection—specifically, that Howell was "suspected of unlawfully being in possession of firearms and possibly narcotics."

Since its requirement for a drug connection was met in this new letter, the Texas National Guard approved the request. In all, six reconnaissance

¹⁵ In our discussions with the sheriff's office, it denied receiving drug material from Howell.

¹⁶ Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms Investigation of Vernon Wayne Howell, also known as David Koresh (Sept. 1993).

overflights would be made, with thermal imaging used on at least two flights to search for armed guards and drug-manufacturing facilities.¹⁷

ATF's Second Counterdrug Request: Assistance From Joint Task Force Six and the Texas National Guard Counterdrug Program

By late January 1993, the ATF had taken statements from other former Davidians and their relatives that suggested a drug connection:

- Information about affidavits and testimony in a 1992 court case that a methamphetamine laboratory was still at the compound after it had supposedly been turned over to the sheriff's office.
- Reports that Howell may have used the laboratory.
- Reports that Howell gave illegal drugs to some of his followers.

At the same time, an ATF undercover agent reported that Howell had told him, in conversation at the compound, that (1) the site would be a good place for making methamphetamine and (2) the sheriff suspected him of manufacturing drugs. Another Davidian resident, according to two undercover ATF agents, told them that he himself had been involved in drugs at one time. In addition, thermal images made by National Guard overflights had shown a "hot spot" inside the compound, possibly indicating a methamphetamine laboratory.

Meanwhile, in preparation for serving warrants at the compound, ATF sought operational and logistical help from other agencies, including the military. It updated the DOD liaison on its case, mentioning that counterdrug support would soon be requested, and it gave information on the drug connection to the head of the Texas National Guard counterdrug program. On January 22, 1993, after some confusion over the appropriate route to take, the ATF's written request for military support of the upcoming warrant service arrived at Operation Alliance. It asked for certain training, as well as a loan of Bradley infantry fighting vehicles and other equipment, for "a continuation of the firearms and drug case."¹⁸ When the ATF filled out the Alliance's request form, it noted that the operation involved a "possible meth lab."

¹⁷At that time, clandestine manufacture of methamphetamine was thought to produce considerable heat, which infrared imaging could pick up. LEAs, including the DEA, sometimes used aerial thermal imaging to detect the heat produced in illegal narcotics manufacture.

¹⁸The letter noted that no weapon systems on the Bradleys would be used; it requested floodlights, loudspeakers, smoke generators, gas masks, night-vision goggles, and office and camping gear.

On February 2, 1993, the Alliance and its military advisers met to consider the request for support. The ATF discussed some of the indications of a drug laboratory—statements by former residents; the suspicious delivery of materials possibly intended for use in making drugs (sometimes referred to as “precursor materials”);¹⁹ and the hot spot, which was identified on an aerial photograph of the compound. Since its requirement for a possible drug connection was met, the Alliance referred the request to Joint Task Force Six and the Texas National Guard counterdrug program. In its letter forwarding the request, the Alliance cited “a dangerous extremist organization believed to be producing methamphetamine.”

On February 4, 1993, representatives of the Texas National Guard counterdrug program and Joint Task Force Six met with the ATF to discuss the request that Operation Alliance had passed on to them. This meeting concentrated on parameters, limits, and training objectives but did discuss the drug connection. The ATF presented indications of a possible methamphetamine laboratory at the Davidian compound: reports by former residents, deliveries of possible precursor materials, and thermal images from reconnaissance overflights that indicated the possible location of the laboratory. The ATF also noted in its presentation that some current residents had recent drug-related arrests. According to one military attendee, the evidence of a possible drug connection was not the strongest they had ever seen, nor was it the weakest.

At this meeting the Texas National Guard agreed to provide the ATF operation with vehicles, office and camp equipment.²⁰ Approval by Joint Task Force Six took somewhat longer. After its parent organization, the Army Forces Command, had reviewed and modified the support requested, Joint Task Force Six agreed on February 17, 1993, to provide range practice and some limited training. During February 25–27, Joint Task Force Six’s rapid-support unit trained ATF agents at Fort Hood, Texas.²¹

¹⁹The glassware, instruments, and chemicals mentioned earlier (p. 7).

²⁰This request to the Texas National Guard was later modified (February 24, 1993) because the ATF now needed support for a dynamic entry rather than a siege, as earlier planned.

²¹They did not receive training on securing or removing drug material. Texas National Guard helicopters and crews also traveled to Fort Hood (February 27) to practice with the ATF their support of the operation.

Continuation of Military Assistance During the Standoff

On the day that the ATF attempted to serve arrest and search warrants at the compound, the Texas National Guard joined several local, state, and federal LEAs to support the operation. ATF had planned a dynamic entry to secure the Davidians before they could get to their weapons. However, the Davidians were warned of the ATF's approach and met the agents with gunfire. A 51-day standoff resulted, from February 28 to April 19, 1993, during which the ATF and the FBI (which took control of the operation) requested and received a range of support from the active military and the Texas National Guard.

The bulk of support during the standoff qualified as military assistance to civilian authorities, which requires no connection to drugs in order to be provided but which generally must be repaid. However, Texas National Guard counterdrug assistance (mainly helicopters and personnel) continued to be provided after the attempted warrant service became a standoff because, upon the Davidians' eventual surrender, this support would be needed to finish the counterdrug mission.²²

Approval of Military Counterdrug Support Was Reasonable and Authorized

DOD provided support for counterdrug activities of the Davidian operation under section 1004 of the National Defense Authorization Act of 1991 (P.L. 101-510). The Texas National Guard also provided counterdrug support under 32 U.S.C. § 112. These laws authorize certain types of support of LEAs' counterdrug activities.²³ However, neither law provides a formal standard for determining the level of counterdrug activity that a particular operation must include for authorization of such support. Because there is no formal standard, the military officials involved have considerable discretion in determining the degree of counterdrug activity necessary to approve the support. Based on our review of the relevant statutes, events leading up to the decision by military officials to approve the support, and interviews with key personnel, we found no basis to conclude that the officials involved abused that discretion. We also found no indication that ATF officials misrepresented the information provided to the military in order to obtain the support. Therefore, we conclude that the military's decision to approve the counterdrug support was reasonable and authorized under the relevant statutes.

²²According to the Texas National Guard, this counterdrug support did not require a new request, as it was provided as a continuation of the ATF's second request approved February 4, 1993.

²³See app. II for a more detailed discussion of these laws.

ATF Planning for Warrant Service Included Measures for Drug Laboratory

ATF spent several months planning the operation to serve warrants at the Davidian compound. Although the possible drug laboratory was not a major part of this effort, ATF did plan and take certain measures to deal with it.

As recounted earlier, in December 1992 the ATF had already asked the DEA to handle the illegal drug laboratory that it thought might be hidden on the compound.²⁴ By the end of January 1993, its plans reflected that agreement: A team of DEA agents, including one certified to handle clandestine laboratories, would be on hand the day of the warrant service specifically to deal with drug evidence. If ATF agents should encounter any drug materials while securing people or weapons/explosives evidence, they were to pull back from that particular location, cordon it off, and call in the DEA team. The DEA agents would manage the drug evidence and supervise cleanup. This solution was in keeping with standard practice by ATF and other federal LEAs.

These plans were shared with the military organizations supporting the operation. At the February 4 meeting between ATF and the military, participants discussed the dangers of operating around volatile substances (chemicals for making methamphetamine and explosives are very volatile), especially with gunfire and diversionary devices.²⁵ The ATF also assured the military representatives that it would have a DEA team ready to "take down the lab." Indeed, some days before the warrant service occurred, the ATF informed DEA of the date, time, and place of the operation and confirmed that DEA would have a certified clandestine-laboratory agent at ATF's command post to handle the drug evidence.

ATF also took certain standard measures to guard against explosives, weapons, and hazardous chemicals:

- During final training for the operation, according to ATF and military sources, ATF leaders discussed with their agents the suspected laboratory and urged caution in the use of weapons. Those few agents

²⁴Its location was not known.

²⁵These devices, sometimes referred to as "flashbangs," are useful in diverting criminal suspects. Their explosions create a very brilliant flash and a very loud noise to disorient or stun people in the immediate vicinity.

carrying diversionary devices were reminded to look before deploying them.

- Before ATF attempted to serve the warrants, at least one ATF leader went over routine cautions with the agents—do not taste, smell, or touch anything, do not interfere with any chemical reaction, be sure to undergo decontamination if you get drug material on yourself or weapons, etc.
- During the attempted warrant service, ATF teams wore helmets, anti-ballistic vests, protective gloves, sturdy boots, and eye protection. They also had first-aid kits and fire extinguishers on hand.

These measures also conform in large part with DEA's drug-laboratory safety measures for initial-entry teams. They differ only in that the entire clothing of DEA teams (hoods, gloves, pants, and jackets) are made of Nomex,²⁶ whereas only the gloves of ATF agents are made of this material.

ATF planners acknowledged that their entry teams were not heavily protected against hazardous drug materials. This did not concern them, however, because the laboratory was not a tactical consideration. They believed they could eliminate some parts of the main residence (e.g., bedrooms, dining room, and entrances) as likely sites for a drug laboratory. Moreover, the need to secure the weapons and armed suspects overrode the hazards of a possibly disassembled laboratory.

On the day of the warrant service, DEA agents with special gear were at the command post specifically to handle any drug laboratory ATF might encounter. According to the DEA, it had arranged for a state chemist to be on standby to assist it, and its hazardous-materials van was on standby that day at its Waco office. Moreover, DEA agents, including the laboratory-certified individual, remained part of the law enforcement support during the standoff to handle any drug evidence that might be uncovered once the residence had been secured and vacated.²⁷ At DEA's request, the state chemist was also at the command post at least 1 day during the siege.

²⁶Nomex is a highly fire-resistant commercial material used in protective clothing.

²⁷At some point in the standoff, the DEA asked to be part of the final clearing of the site after removal of the Davidians, but that task was later assumed by another LEA in the aftermath of the fire.

Types, Cost, and Reimbursement of Military Support to the Davidian Operation

Military support of the Davidian operation came from both active and National Guard units. The cost of all that support amounted to almost \$1 million, of which about 76 percent was reimbursed to the military and another 14 percent (\$137,400) waived as counterdrug support. The remaining 10 percent represent the military's billing discrepancies.

Types and Costs of Military Support

Military support for the Davidian operation ranged from aircraft and vehicles to equipment, supplies, and services (training, maintenance, etc). We have estimated the cost of this support to be at least \$982,400.²⁸ The Alabama and Texas National Guard, the Army (including Special Forces units), the Air Force, and other DOD activities—the Uniformed Services University of the Health Sciences, the Regional Logistics Support Office and its Defense Reutilization and Marketing Offices—all provided some form of military assistance.

Table 1 summarizes the types and costs of this support. The FBI incurred the largest single costs—about \$230,000 for damages to an Army UH-1 helicopter and \$170,000 in operational costs for three Army UH-1s. In these two instances, assistance was provided during the standoff; the helicopter damage was due to pilot error, not Davidian gunfire.

²⁸This total does not include a cost for medical support from the Uniformed Services University of the Health Sciences (which provided 133 staff days of services to the FBI during the standoff) because the military no longer has documents available. The total also does not include the value of material provided by the Regional Logistics Support Office and Defense Reutilization and Marketing Offices, since those items, as excess inventory, were provided free of charge.

Table 1: Types and Costs of Military Assistance to the ATF and the FBI in Their Branch Davidian Operations

Types of support	Description	Cost
Aircraft	Reconnaissance and surveillance overflights, aerial diversion, transportation, standby for medical evacuation, and recovery of loaned items (helicopters and fixed-wing aircraft)	\$548,400
Vehicles	Surface transportation, protection, and recovery (tanks and other combat vehicles, utility vehicles, and various tracked and wheeled transport and recovery vehicles)	196,600
Equipment and supplies	Flak vests, helmets, masks, night-vision goggles, cameras, binoculars, electronic jammers, cellular telephones, ammunition for grenade launcher, tents, generators, lighting, clothing, fuel for vehicles and generators, and medical dressings	68,200
Personnel	Coordination, liaison, logistics, maintenance, 24-hr. medical and health clinic, operation of classified equipment, driver training, grenade-launcher training, mine-detector training, communications training, medical training, and firing-range support	169,200
Total		\$982,400

Note: In figuring costs for active-duty military participants, incremental costs alone—per diem and travel, but not pay and benefits—were used.

Source: DOD and the Texas National Guard.

Reimbursement of Support

As required by the Economy Act, the ATF and the FBI reimbursed the military for most of its assistance. Reimbursements covered 76 percent (about \$747,300) of the costs, of which the FBI paid about 96 percent (about \$718,300) and the ATF the remainder (about \$29,000). The FBI also paid directly for the services of the Uniformed Services University of the Health Sciences. Appendix III provides more detail on reimbursements.

Billing Discrepancies

In five instances the active Army failed to properly bill the FBI for services, equipment, and supplies, resulting in undercharges totaling about \$100,000. The largest instance was an undercharge of \$73,000 in operational expenses for the UH-1 and CH-47 helicopters lent by Fort Hood. According to a Fort Hood official, the Army does not plan to collect these undercharges, since it would realize no current benefit—that is, it would have to apply any collection to prior-year obligations. There were also two minor Texas National Guard overcharges for vehicle parts and helmets. Appendix IV provides more details on these billing discrepancies.

Waivers of Reimbursement for Counterdrug Support

The military waived reimbursement for the costs of support from its counterdrug programs. This assistance represented a small part of the overall military support to the Davidian operation, accounting for only

14 percent of costs (about \$137,400) and consisting of aerial overflights, helicopter logistical support, fuel, telephone service, and training. Most of this nonreimbursable assistance was provided by the Texas National Guard counterdrug program at a cost of about \$130,600 (about 37 percent of the Texas National Guard's total support). The Alabama National Guard and Joint Task Force Six waived the minor costs of the counterdrug support they provided—\$1,200 and \$5,600, respectively. Appendix V contains more details on these waivers.

Conclusions

The ATF requests for assistance from military counterdrug programs met the requirements of the relevant statutes for authorizing such support. In these written requests, ATF cited its suspicions of drug activity. In both cases, the military reasonably exercised its discretion in providing that support as authorized under the relevant statutes.

In planning how it would serve warrants at the compound, ATF planned for the possibility of encountering a methamphetamine laboratory or other hazardous drug materials. As required by agency policy, ATF agents in the operation were made aware of the suspected laboratory and of the appropriate precautions. Moreover, DEA agents were at the command post to handle any drug-related materials.

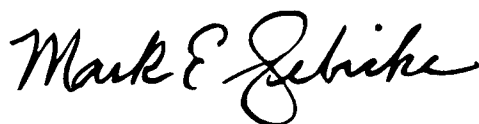
Agency Comments

In oral comments on a draft of this report, the Department of Defense stated it accepted the report as presented and the Department of Justice (including the Drug Enforcement Agency and the Federal Bureau of Investigation) stated it concurred with the substance of the report. In written comments on a draft of this report, the Department of the Treasury (including the Bureau of Alcohol, Tobacco, and Firearms) stated it concurred with the report's conclusions. All three departments provided technical comments that we incorporated as appropriate.

We are sending copies of this report to interested congressional committees. We are also sending copies to the Honorable Louis Caldera, Secretary of the Army; the Honorable Russell C. Davis, Chief of the National Guard Bureau; the Honorable John W. Magaw, Director of the Bureau of Alcohol, Tobacco and Firearms; the Honorable Louis J. Freeh, Director of the Federal Bureau of Investigation; and the Honorable

Thomas A. Constantine, Administrator of the Drug Enforcement Administration. Copies will also be made available to others upon request.

Please contact me at (202) 512-5140 if you have any questions concerning this report.

A handwritten signature in black ink, reading "Mark E. Gebicke". The signature is written in a cursive style with a large, stylized "M" and "G".

Mark E. Gebicke
Director, National Security and
Preparedness Issues

Contents

Letter	1
--------	---

Appendix I Organizations Visited and Documents Reviewed	22
--	----

Appendix II Statutes Related to Military Support of Branch Davidian Operations	24
--	----

Appendix III Reimbursements to the Military From the ATF and the FBI for Assistance to Their Branch Davidian Operations	27
---	----

Appendix IV Discrepancies in Billing the FBI for Military Support to Its Branch Davidian Operations	28
--	----

Appendix V Costs Waived by the Military in Support of the Branch Davidian Operations	29
Appendix VI Comments From the Department of the Treasury	30
Table	Table 1: Types and Costs of Military Assistance to the ATF and the FBI in Their Branch Davidian Operations
	16

Abbreviations

ATF	Bureau of Alcohol, Tobacco, and Firearms
DOD	Department of Defense
DEA	Drug Enforcement Administration
FBI	Federal Bureau of Investigation
LEA	law enforcement agencies

Organizations Visited and Documents Reviewed

To obtain the information needed for our review, we visited or contacted the following organizations:

- Military organizations
 - The Office of the Deputy General Counsel, the Department of Defense (DOD); the Office of the Coordinator for Drug Enforcement Policy and Support, Office of the Deputy Assistant Secretary of Defense; and the National Guard Bureau, all in Washington, D.C.
 - Joint Task Force Six, Fort Bliss, Texas.
 - Texas National Guard, Camp Mabry, Texas.
 - U.S. Army Aviation and Troop Command, St. Louis, Missouri.
 - U.S. Army, III Corps, Fort Hood, Texas.
 - Defense Finance and Accounting Service, Fort Monmouth, New Jersey.
- Law enforcement organizations
 - Alcohol, Tobacco, and Firearms (ATF), Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), and Customs in Washington, D.C.
 - Local offices of federal law enforcement agencies (LEA) (ATF, DEA, and the U.S. Attorney's Office) in Texas.
 - Operation Alliance, Fort Bliss, Texas.
 - State and local LEAs—the McLennan County Sheriff's Department and District Attorney's Office, the Texas Department of Public Safety, and the Texas Department of Protective and Regulatory Services.

We also reviewed hundreds of documents and other media, including the following:

- Investigation into the Activities of Federal Law Enforcement Agencies toward the Branch Davidians, Committee on Government Reform and Oversight in conjunction with the Committee on the Judiciary, House of Representatives Report 104-749 (Aug. 2, 1996), Union Calendar No. 395.
- Activities of Federal Law Enforcement Agencies toward the Branch Davidians, Joint hearings before the Subcommittee on Crime of the Committee on the Judiciary and the Subcommittee on National Security, International Affairs, and Criminal Justice of the Committee on Government Reform and Oversight, Committee on the Judiciary Serial No. 72 (July 19-21, 24-28, 31, and Aug. 1, 1995), in three parts.
- Events Surrounding the Branch Davidian Cult Standoff in Waco, Texas, House Judiciary Committee hearing (Apr. 28, 1993).

- Report of the Department of the Treasury on the Bureau of Alcohol, Tobacco, and Firearms Investigation of Vernon Wayne Howell, also known as David Koresh (Sept. 1993).
- Guidelines for the Cleanup of Clandestine Drug Laboratories, Joint Federal Task Force of the Drug Enforcement Administration, Environmental Protection Agency, and Coast Guard (March 1990).
- "ATF Policy Regarding Investigations Involving Clandestine Laboratories," dated April 25, 1990 (subsequently incorporated into ATF Order 3210.7B).
- Excerpts from the DEA agent's manual.
- All Waco Administrative Review documents.
- ATF investigative files.
- Final report by Brigadier General Sagsveen on the Waco/Mt. Carmel incident (July 30, 1996).
- Results of the focal group review of Texas National Guard support to the ATF, known informally as the "Spence Report" (Apr. 28, 1993).
- After-action report of Texas National Guard counterdrug support in Waco, Texas (Apr. 29, 1993).
- Other relevant DOD provisions, policies, and procedures as well as information on the National Guard counterdrug program, other Guard material, and the operational support planning guide for Joint Task Force Six.
- Operation Alliance procedures for reviewing counterdrug requests.
- Videotapes of overflights of the Davidian compound and of selected operational briefings.

Statutes Related to Military Support of Branch Davidian Operations

National Defense Authorization Act of 1991

Section 1004 of the National Defense Authorization Act of 1991 authorized the Secretary of Defense to provide the support of active military units for the counterdrug activities “of any other department or agency of the Federal Government or of any State, local, or foreign law enforcement agency.”¹ In 1993, when the Davidian operations occurred, the act limited active military support for counterdrug activities to the following nine categories:²

- Maintenance and repair of equipment made available by DOD to a federal department or agency or to a state or local government.
- Maintenance, repair, and upgrading of non-DOD equipment to ensure that it will be compatible with equipment used by DOD.
- Transportation of personnel, equipment, or supplies.
- Establishment and operation of bases of operation or training facilities.
- Training of law enforcement personnel, including associated support expenses for trainees and the provision of materials necessary to carry out such training.
- Detection, monitoring, and communication of movement of air, sea, and surface traffic.
- Construction of roads and fences and installation of lighting to block drug-smuggling across international boundaries of the United States.
- Establishment of command, control, communication, and computer networks to improve integration of law enforcement, active military, and National Guard activities.
- Provision of linguist and intelligence analysis services.

10 U.S.C. §§ 371–382

Sections 371–382 of title 10 of the U.S. Code authorize the Secretary of Defense to provide certain types of support by active military units to federal, state, or local law enforcement officials. LEAs are not required to reimburse DOD for the support if it (1) is provided in the normal course of military training or operations or (2) results in a benefit to DOD that is “substantially equivalent” to that which would otherwise be obtained from

¹ P.L. 101–510, div. A, title X, § 1004, as amended. Congress was extended the authority through 2002. See P.L. 105–261, div. A, title X, § 1021

² In 1993, Congress added a tenth purpose for which the Secretary may provide support—aerial and ground reconnaissance. See P.L. 103–160, div. A., title XI, § 1121(b).

military operations or training.³ Otherwise, DOD must be reimbursed as required by the Economy Act.⁴

Title 10 authorizes the following types of support:

- Any information collected during the normal course of training or operations that may be relevant to a violation of any federal or state law within the jurisdiction of the officials supported.
- Equipment (including associated supplies or parts) and base or research facilities.
- Training in the operation and maintenance of DOD equipment.
- Relevant expert advice.
- Maintenance of equipment.
- The operation of military equipment for (1) monitoring air and sea traffic; (2) monitoring surface traffic outside U.S. borders, as well as 25 miles within U.S. borders if the initial detection occurred outside the United States; (3) aerial surveillance; (4) intercepting vessels or aircraft detected outside the land area of the United States; (5) facilitating communications with federal LEAs; and (6) transporting and staffing an operational base for civilian law enforcement personnel.⁵

32 U.S.C. § 112

Under 32 U.S.C. § 112, the Secretary of Defense may provide funds appropriated for National Guard activities to the governor of a state who submits a drug-interdiction and counterdrug-activities plan that meets certain statutory requirements. To obtain funding, a state's plan must (1) specify how National Guard personnel and equipment will be used in such activities, (2) certify that the use of the National Guard of the state is consistent with state law, and (3) certify that the activities included in the plan serve a state law enforcement purpose. If a state's plan is approved and DOD provides funding, the state may use the funds to pay expenses related to the use of its National Guard personnel (while not in federal

³ 10 U.S.C. § 377.

⁴ The Economy Act, 31 U.S.C. § 1535, generally mandates prompt repayment for goods and services provided by one agency to another.

⁵ See 10 U.S.C. § 374. Federal LEAs responsible for enforcing the Controlled Substances Act (21 U.S.C. § 801 et seq.), certain Immigration and Naturalization Act provisions (8 U.S.C. §§ 1324-1328), section 401 of the Tariff Act of 1940, and the Maritime Law Enforcement Act may request such aid.

service) and equipment for drug interdiction and counterdrug activities.⁶ DOD considers support requests that are not specifically included in the original plan on a case-by-case basis if accompanied by a certification from the state's attorney general that the operations requested are consistent with state law.⁷ LEAs are not required to reimburse the National Guard for this support.

National Defense for Authorization Act for Fiscal Year 1990

Section 1208 of the National Defense Authorization Act⁹ allowed DOD to give federal and state agencies equipment—free of charge—that the Secretary of Defense had declared excess to the military's needs. Under this statute, the Secretary of Defense was required to determine that the equipment was suitable for use in counterdrug activities.

⁶ The act defines "drug interdiction and counter drug activities" as "the use of National Guard personnel in the drug interdiction and counter-drug law enforcement activities authorized by the law of the State and requested by the Governor of the State."

⁷ National Guard (NGR) 500-2.

⁸ P.L. 101-189.

⁹ In 1996, Congress repealed § 1208. P.L. 104-201, div. A., title X, section 1033(a) contained similar language now codified as 10 U.S.C. § 2576a.

Reimbursements to the Military From the ATF and the FBI for Assistance to Their Branch Davidian Operations

Support	Recipient	Reimbursement
Aircraft		
Active Army—3 UH-1 utility helicopters and 3 CH-47 helicopters	FBI	\$375,179
Active Air Force—C-141 transport of FBI's hostage rescue team (and its equipment) to and from Waco	FBI	73,112
Vehicles		
Texas National Guard—2 M-35A2 2½-ton cargo trucks with transport trailers, 5 M-818 5-ton tractor trucks with trailers, 12 M-1009 high-mobility multi-purpose wheeled vehicles	ATF	6,858
Texas National Guard—10 M-2 Bradleys (infantry fighting vehicles), 3 M-332 tractor trailers, 5 M-728 combat engineer vehicles, 1 M-88A1 tracked recovery vehicle (tank retriever), miscellaneous vehicles	FBI	174,313
Active Army—8 M-998 high-mobility multi-purpose wheeled vehicles, an M35A2 2½-ton cargo truck, 2 5-ton trucks, 14 heavy equipment transports, miscellaneous vehicles	FBI	15,466
Equipment		
Texas National Guard—unrecovered photographic and observation equipment, 100 canteens, 50 first-aid dressings, 130 empty magazines for M-16A1 rifles, assorted field clothing	ATF	5,022
Texas National Guard—16 helmets, 13 helmet covers, 12 M-16A1 rifle slings, 54 empty magazines for M-16A1s, an M-25A1 protective mask, 180 tent pins	FBI	5,190
Active Army—2,488 gallons of generator fuel, fencing, 200 sandbags, 6 boxes of chemical lights, cellular-phone charges	FBI	5,523
Supplies		
Texas National Guard—286 cases of field rations and 2,036 gallons of diesel fuel	ATF	17,015
Texas National Guard—62 cases of field rations, 10,529 gallons of diesel fuel, and transportation costs of tracked vehicles	FBI	19,133
Personnel (per diem, transportation, and travel costs)		
Active Air Force—electronic jammers and travel costs	FBI	34,340
Active Army—liaison to LEAs and HQs; maintenance of aircraft, vehicles, and equipment; operation of equipment; and local transportation costs for DOD personnel	FBI	16,135
Uniformed Services University of the Health Sciences—24-hr. medical control, 24-hr clinic, drafting of Waco medical plan	FBI	Reimbursed 133 staff-days ^a
Total of known amounts reimbursed		\$747,286

^aA flat rate plus all travel was used under a Memorandum of Understanding between the two parties. All travel vouchers were sent directly to the FBI for payment; FBI paid for expendable medical supplies.

Discrepancies in Billing the FBI for Military Support to Its Branch Davidian Operations

Undercharges	Amount
Active Army used the wrong flying-hour rates when determining charges for:	\$73,073
• flights by UH-1 helicopters for transport, deployment, medical evacuation support, and recovery	
• flight by CH-47 helicopter on medical standby	
Active Army did not bill for the loss of two night-vision goggles	9,168
Active Army did not bill for 40-mm grenade-launcher ammunition (200 target-practice rounds, 50 illumination rounds, and 250 high-explosive rounds)	5,066
Active Army did not bill for 9 cases of field rations consumed by Army personnel while supporting the siege	164
Active Army (Special Operations) did not bill for the following services provided during the siege:	10,793
• observers and technical liaisons to the FBI's hostage rescue team	
• operation of classified/special equipment	
• training federal agents in use of classified equipment	
Total undercharges	\$98,264
Overcharges	
Texas National Guard overcharged for vehicular parts	\$41
Texas National Guard overcharged for the loss of 8 Kevlar ground-troop helmets	498
Total overcharges	\$539
Net undercharges	\$97,725

Costs Waived by the Military in Support of the Branch Davidian Operations

Support	Recipient	Cost	Authority for waiver
Alabama National Guard			
2 overflights for reconnaissance photography of the compound	ATF	\$1,238	32 U.S.C. § 112 (counterdrug)
Subtotal		\$1,238	
Active Army (Joint Task Force Six)			
Counterdrug training	ATF	5,610	10 U.S.C. § 377 (substantial training benefit)
• Communications			P.L. 101-510 § 1004 (b) 4-5
• Medical evacuation			10 U.S.C. § 373
• First aid			
• Firing-range support			
• Minor construction			
Subtotal		\$5,610	
Texas National Guard			
UC-26 aircraft	ATF	8,032 ^a	32 U.S.C. § 112 (counterdrug)
• 4 overflights of the compound for reconnaissance photography			
• 1 flight in support of siege			
Helicopter flights in support of warrant service	ATF	15,388 ^b	32 U.S.C. § 112 (counterdrug)
Helicopter flights in support of siege	ATF	2,454	32 U.S.C. § 112 (counterdrug)
Personnel services in siege	ATF and FBI	102,301 ^c	32 U.S.C. § 112 (counterdrug)
• Liaison, command and control			
• Helicopter flight crews, drivers of various vehicles			
• Vehicle and equipment maintenance			
Fuel for non-tracked vehicles	ATF and FBI	410	32 U.S.C. § 112 (counterdrug)
Landline and cellular telephone service	ATF and FBI	1,995	32 U.S.C. § 112 (counterdrug)
Subtotal		\$130,580	
Total amount of expenses waived by the military		\$137,428	

^a Includes costs for flying hours, personnel, and special maintenance contract.

^b Includes repair of gunshot damage sustained in warrant service.

^c Total pay, per diem, and travel (896 staff-days). All personnel were in title 32 (counterdrug program) status.

Comments From the Department of the Treasury



UNDER SECRETARY

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C.

August 3, 1999

Mark E. Gebicke, Director
National Security and Preparedness Issues
United States General Accounting Office
Washington, DC 20548

Dear Mr. Gebicke:

This is in response to your request for comments on the General Accounting Office's draft report concerning military assistance provided to the Bureau of Alcohol Tobacco and Firearms (ATF) and to the Federal Bureau of Investigation (FBI) in 1993 in connection with the Federal law enforcement operation at the Branch Davidian compound near Waco, Texas.

With respect to the military counterdrug support provided to ATF during the investigation of David Koresh and during the warrant operation on February 28, 1993, the draft report concludes that ATF's request for assistance from the military met the requirements of the relevant statutes for authorizing such support. The draft report also concludes that ATF's planning for the warrant operation addressed the possibility of encountering a methamphetamine laboratory at the compound and that the planning of the operation was consistent with ATF's policies, and the policies of other Federal law enforcement agencies, when a drug laboratory may be present.

The Department of the Treasury concurs with the conclusions set forth in the draft report with respect to ATF. As you know, in 1993 the Department of the Treasury conducted a review of ATF's law enforcement operation at the Branch Davidian compound. As part of this overall review, the Treasury Department investigated the military assistance provided to ATF and likewise concluded that ATF had conducted a legitimate inquiry into whether a drug nexus existed in the Branch Davidian investigation and that ATF had properly presented this information to the United States military and to the Texas National Guard to obtain counterdrug military support. The

Appendix VI
Comments From the Department of the
Treasury

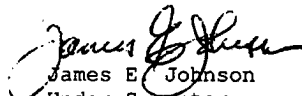
-2-

Department's findings in this regard were set forth in the September 1993 Report on the Bureau of Alcohol, Tobacco and Firearms' Investigation of Vernon Wayne Howell, also known as David Koresh.

Finally, we have enclosed proposed technical corrections to certain information in the draft report.

Thank you for the opportunity to review and comment on the draft report.

Sincerely,


James E. Johnson
Under Secretary
(Enforcement)

Enclosure

Appendix VI
Comments From the Department of the
Treasury
